



DEPARTMENT OF LABOR

Employment and Training Administration

Labor Certification Process for the Temporary Employment of Aliens in Agriculture in the United States: Prevailing Wage Rates for Certain Occupations Processed under H-2A Special Procedures; Correction and Rescission

AGENCY: Employment and Training Administration, Labor.

ACTION: Correction to Notice; Rescission of Certain Wages for Specified States in Notice.

SUMMARY: The Department of Labor (we or the Department) is issuing this notice to correct a previous announcement of prevailing wage rates covering the employment of certain temporary or seasonal nonimmigrant foreign workers (H-2A workers) and certain domestic workers engaged in open range production of livestock in Texas, Wyoming, Idaho, Montana, North Dakota, South Dakota, and Oklahoma. In addition, the Department is rescinding the wage determinations listed in the January 8, 2013, Federal Register notice covering the employment of H-2A workers and certain domestic workers engaged in sheepherding and goatherding occupations in Arizona, Nevada, Oregon and Washington.

DATE: This notice is effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: For further information, contact William L. Carlson, Ph.D., Administrator, Office of Foreign Labor Certification, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Room C-4312, Washington, DC 20210; Telephone (202) 693-3010 (this is not a toll-free number).

Individuals with hearing or speech impairments may access the telephone number above via TTY by calling the toll-free Federal Information Relay Service at 1-800-877-8339.

SUPPLEMENTARY INFORMATION

The H-2A nonimmigrant worker visa program enables United States (U.S.) agricultural employers to employ foreign workers on a temporary basis to perform agricultural labor or services. Section 101(a)(15)(H)(ii)(a) of the Immigration and Nationality Act (INA or the Act), 8 U.S.C. 1101(a)(15)(H)(ii)(a); see also 8 U.S.C. 1184(c)(1) and 1188. The Department's H-2A regulations at 20 CFR 655.120(a) provide that employers must pay their H-2A workers and domestic workers in corresponding employment at least the highest of: (i) the Adverse Effect Wage Rate for the position; (ii) the prevailing hourly wage or piece rate; (iii) the agreed-upon collective bargaining wage, if applicable; or (iv) the Federal or State minimum wage, in effect at the time the work is performed, except where a special procedure has been approved for use in an occupation or specific class of agricultural employment.

On June 14, 2011, the Department issued a Training and Employment Guidance Letter (TEGL) revising special procedures for, among others, occupations involved in the open range production of livestock, which clarified the process for establishing the annual prevailing wage rates for those occupations. TEGL No. 15-06, Change 1, Special Procedures: Labor Certification Process for Occupations Involved in the Open Range Production of Livestock under the H-2A Program (the "Open Range TEGL").¹ On the same date, the Department also issued a TEGL revising special procedures for occupations involved in sheepherding and goatherding occupations, which clarified the process for establishing the annual prevailing wages for those occupations. TEGL No. 32-10, Special Procedures: Labor Certification Process for Employers Engaged in Sheepherding and

¹ http://wdr.doleta.gov/directives/corr_doc.cfm?DOCN=3044.

Goatherding Occupations under the H-2A Program (the “Sheepherding/Goatherding TEGL”).² Both documents were subsequently published in the Federal Register. 76 FR 47243 and 76 FR 47256 (Aug. 4, 2011).

For occupations involving the open range production of livestock and sheepherding and goatherding, where the SWA survey results were insufficient to establish a prevailing wage rate for an occupation due to inadequate sample size or another valid reason, both TEGLs’ wage setting procedures allow the Department to issue a prevailing wage or piece rate for that State based on the wage rate findings submitted by an adjoining or proximate SWA for the same or similar agricultural activity. 76 FR at 47245 (open range livestock); 76 FR at 47258 (sheepherding and goatherding). In the event that the Department cannot establish a prevailing wage rate by using comparable survey data from an adjoining or proximate SWA, the Department will consider aggregating survey data across regions used by the U.S. Department of Agriculture. Id.

Correction of Certain Wages for Open Range Production of Livestock

On January 8, 2013, the Department published the special procedures wages in the Federal Register, which included wages for open range production of livestock, itinerant animal shearing, sheepherding, goatherding, and custom combine operations. 78 FR 1260 (Jan. 8, 2013) (“January 8 Notice”). These wages were issued with an immediate effective date. Id. The wage findings for open range production of livestock in Texas and Wyoming in the January 8 Notice were reported in error. Because the SWA surveys for Texas and Wyoming resulted in a “no finding” for open range production of livestock, the prevailing wage for those States should have been based on the wage rate findings submitted by an adjoining or proximate SWA for the same or similar agricultural activity, in accordance with the TEGL’s

² http://wdr.doleta.gov/directives/corr_doc.cfm?docn=3042.

wage setting guidance. Therefore, in the case of Texas and Wyoming, the prevailing wage for open range production of livestock will be based on the wage finding from Colorado, which adjoins Wyoming and is proximate to Texas, within the meaning of the TEGL.

In addition, the January 8 notice based the wage for open range production of livestock in Idaho, Montana, North Dakota, and South Dakota on Wyoming, the proximate State with a wage finding, and based the wage for the same occupation in Oklahoma on Texas, the adjoining State with a wage finding. Because we are correcting Texas and Wyoming wages in this notice, we therefore must also correct the wages for Idaho, Montana, North Dakota, South Dakota, and Oklahoma. The wage for Idaho, Montana, North Dakota, and South Dakota will be based on Colorado, a State proximate to those States, and the wage for Oklahoma will be based on Colorado, which directly borders Oklahoma. The wage table below, which we have reproduced in its entirety for ease of reference, reflects the corrected wages for Texas, Wyoming, Idaho, Montana, North Dakota, South Dakota and Oklahoma.

TABLE 1 –PREVAILING WAGE RATES FOR THE OPEN RANGE PRODUCTION OF LIVESTOCK OCCUPATIONS

State	Prevailing Wage Rates for Open Range Cattlehand/Calver
Colorado.....	\$875.00 Per Month Plus Room and Board
Idaho	\$875.00 Per Month Plus Room and Board
Montana	\$875.00 Per Month Plus Room and Board
North Dakota.....	\$875.00 Per Month Plus Room and Board
Oklahoma.....	\$875.00 Per Month Plus Room and Board
South Dakota.....	\$875.00 Per Month Plus Room and Board
Texas	
Region 1.....	\$875.00 Per Month Plus Room and Board
Region 2.....	\$875.00 Per Month Plus Room and Board
Region 3.....	\$875.00 Per Month Plus Room and Board
Region 4.....	\$875.00 Per Month Plus Room and Board
Utah.....	\$875.00 Per Month Plus Room and Board
Wyoming.....	\$875.00 Per Month Plus Room and Board

Rescission of Certain Wages for Sheepherding and Goatherding

In addition to the corrections above, the Department is rescinding the January 8 Notice for sheepherding and goatherding occupations in Arizona, Nevada, Oregon and Washington.

The Department is taking this action because of issues regarding the wage finding process in these states. New data for these occupations will be collected by the SWAs in the near future, and the Department will review the data to ensure compliance with applicable law.

This rescission is effective as of January 8, 2013. The wages in these States for these occupations to be paid as of January 8, 2013 are based upon the previous prevailing wage findings issued by the Department for Arizona, Nevada, Oregon and Washington. The prevailing wage rates for sheepherding and goatherding in these states that are effective as of January 8, 2013 are listed below. The wage rate in California remains unchanged. Although the wage rates in the other jurisdictions have not changed, for ease of reference we reproduce the entire wage table as amended below.

TABLE 2 – PREVAILING WAGE RATES FOR SHEEPHERDING AND GOATHERDING OCCUPATIONS

State	Prevailing Wage Rates for Sheep/Goat Herder
Arizona.....	\$750 Per Month Plus Room and Board
California	\$1,422.52 Per Month Plus Room and Board
Colorado.....	\$750.00 Per Month Plus Room and Board
Idaho	\$750.00 Per Month Plus Room and Board
Montana	\$750.00 Per Month Plus Room and Board
Nevada	\$800.00 Per Month Plus Room and Board
New Mexico.....	\$750.00 Per Month Plus Room and Board
North Dakota.....	\$750.00 Per Month Plus Room and Board
Oklahoma.....	\$750.00 Per Month Plus Room and Board
Oregon.....	\$1,227.67 Per Month Plus Room and Board
Texas.....	\$750.00 Per Month Plus Room and Board
Utah.....	\$750.00 Per Month Plus Room and Board
Washington	\$750.00 Per Month Plus Room and Board
Wyoming.....	\$750.00 Per Month Plus Room and Board

AUTHORITY: 8 U.S.C. 1101(a)(15)(H)(ii)(a); 8 U.S.C. 1184(c)(1) and 1188.

Signed in Washington this 14th day of March, 2013.

Jane Oates,
Assistant Secretary, Employment and Training Administration

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